IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 26173 of 2007(N)

PETITIONERS:
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1. **FATHIMATHUL SUHRA, W/O. MOIDEEN RISWAN, CHADANAPARAMBIL HOUSE, THALIKULAM, CHAVAKKAD.**

2. **GALFAR INDIA PVT. LTD., NH 47, BYE-PASS, KUNDANNOOR JUNCTION, COCHIN-682 304, REPRESENTED BY AUTHORISED SIGNATORY K.P. VIJAYAN.**

BY ADV. SRI.V.M.KURIAN,
SRI.MATHEW B. KURIAN,
SRI.K.T.THOMAS,
SRI.C.N.SREEKUMAR.

RESPONDENTS:
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1. **THE TAHSILDAR, KANAYANNUR TALUK, ERNAKULAM.**

2. **THE VILLAGE OFFICER, POONITHURA.**

BY GOVT.PLEADER SRI. C.K. GOVINDAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.26173/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF ONE OF THE AGREEMENTS DTD. 25/01/1997 EXECUTED BETWEEN THE DEVELOPER AND THE PURCHASER.

EXT.P.2: COPY OF THE PROCEEDINGS DATED 27/02/2007 ISSUED BY THE R.1. TO THE P.1.

EXT.P.3: COPY OF THE ORDER OF ASSESSMENT DTD. 27/02/2007.

EXT.P.4: COPY OF THE DEMAND NOTICE DTD. 27/02/2007.

EXT.P.5: COPY OF THE REPRESENTATION DTD. 03/04/2007 SUBMITTED BY THE PETITIONER BEFORE THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

ANTONY DOMINIC,J.

W.P (C) No. 26173 of 2007

Dated this the 27th day of September, 2007

J U D G M E N T

The prayer in this writ petition is to quash Exhibits P2, P3 and P4 and to direct the 1st respondent to consider assessing the individual apartments in the Lake Terrace Apartments Complex as separate buildings applying the principles laid down by this Court Court in the judgment in Bavasons Construction (P) Ltd Vs. State of Kerala [2007 (3) KLT 101]

2. It is the specific case of the petitioner that apartments were constructed on the basis of the agreements between the intending purchasers and the builder, the details of which are given in Para 4 of the writ petition. According to him, owners advanced money, on the basis of which, construction was completed and therefore the apartments should be assessed separately as individual units.

3. This Court had occasion to deal with the very same issue in the aforesaid judgment. In that case, after analysing

the various provisions of the Kerala Building Tax Act 1975, this court directed that the assessing authorities shall give an opportunity to the builder to produce the materials before the concerned Tahasildar regarding the allotment of individual flats to the respective owners, the separate agreements that are entered into with the owners of flats and also evidence to show that payments were made by the allottees from time to time to foot the bill for the construction. Accordingly, the Tahsildar concerned was directed to undertake a fresh assessment in the light of the principles laid down by this court.

4. The facts of this case appears to be similar to the case decided by this Court and therefore the petitioners are entitled to the benefit of said judgment. Accordingly, quashing Exhibit-P2, P3 and P4, I dispose of this writ petition directing that the 1st respondent shall allow the petitioner to produce materials regarding the allotment of individual flats to the respective owners, agreements entered into with the owners of Flats, other evidences such as books of accounts and other documents. If they produce

statements by the individual owners that will also be taken into account. The Assessing Authority shall after allowing the petitioner to produce evidence, afford an opportunity of being heard to them and pass final orders in the matter. This shall be done as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

(ANTONY DOMINIC, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007